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ORIGINAL
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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Oakland

E-filing

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT CRUZ and DARWIN
DIAS,

Plaintiffs,

v.

CITY AND COUNTY OF SAN
FRANCISCO, DOES 1-10,
Inclusive,

Defendants.

CASE NO. 08-00244
Civil Rights

MEJ

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF; DENIAL OF
DISABLED ACCESS TO PUBLIC
FACILITIES; TITLE II OF THE
AMERICANS WITH DISABILITIES ACT;
VIOLATION OF REHAB. ACT OF 1973,
SECTION 504; CALIFORNIA
GOVERNMENT CODE § 11135 ;
VIOLATION OF CALIFORNIA
GOVERNMENT CODE §§ 4450, ET. SEQ.;
VIOLATION OF CALIFORNIA CIVIL
CODE §§ 54 AND 54.1; AND RELATED
CODES AND REGULATIONS

DEMAND FOR JURY TRIAL

Plaintiffs ROBERT CRUZ and DARWIN DIAS complain of
defendants CITY AND COUNTY OF SAN FRANCISCO, and DOES 1-10,
Inclusive, and allege as follows:

INTRODUCTION

1. This case involves the denial of facilities accessible to
disabled persons at the Hallidie Plaza, owned and operated by defendant CITY

1 AND COUNTY OF SAN FRANCISCO (hereinafter sometimes "the City"), and
 2 DOES 1-10, Inclusive. Plaintiffs Robert Cruz and Darwin Dias were stranded for
 3 several hours at Hallidie Plaza, a public place, on a cold and windy evening,
 4 because the City adopted and carried out a policy of regularly stopping elevator
 5 access for disabled persons to Hallidie Plaza at a time when its facilities were
 6 open for use by non-disabled persons.

7 2. Plaintiffs Robert Cruz and Darwin Dias, each a physically
 8 disabled person who requires the use of a wheelchair, were denied their civil
 9 rights under both California law and federal law, as hereinbelow described.
 10 Plaintiffs were denied their rights to full and equal access to the Hallidie Plaza, a
 11 public facility owned and operated by defendants City and County of San
 12 Francisco, and Does 1-10, Inclusive, and located adjacent to Powell and Market
 13 Streets in San Francisco, California, because the Hallidie Plaza facilities were not
 14 properly accessible to mobility disabled persons, such as plaintiffs. Plaintiffs
 15 seek injunctive relief to require defendants to make the Hallidie Plaza and its
 16 facilities accessible to disabled persons during the same hours that these facilities
 17 are open and available to non-disabled persons, and to ensure that any disabled
 18 person who attempts to use these facilities, including plaintiffs, will be provided
 19 access. Plaintiffs also seek recovery of damages for the discriminatory
 20 experience that they suffered, and seek recovery of reasonable attorney fees,
 21 including litigation expenses, and costs, according to statute.

22 23 JURISDICTION

24 3. This Court has jurisdiction of this action pursuant to 28 USC
 25 1331 for violations of the Americans with Disabilities Act of 1990 (hereinafter
 26 sometimes "ADA"), 42 USC 12101, *et seq.* Pursuant to supplemental
 27 jurisdiction, attendant and related causes of action arising from the same facts are
 28 also brought under California law, including but not limited to violations of

1 California Government Code §4450, *et seq.*, and Government Code §11135;
 2 Civil Code §§51, 52, 54, 54.1, 54.3 and 55; and California Code of Regulations,
 3 Title 24-2.

4 4. This Court has subject matter jurisdiction of this action pursuant
 5 to 28 U.S.C. § 1343(3) for claims arising under Section 504 of the Rehabilitation
 6 Act of 1973. Additionally, this Court has jurisdiction over the public
 7 accommodations named in this action pursuant to 28 USC § 1331 for violations
 8 of the Americans with Disabilities Act of 1990, 42 USC §§ 12101, *et seq.*

9 10 **VENUE**

11 5. Venue is proper in the Northern District of California, the
 12 judicial district in which the claims have arisen, pursuant to 28 U.S.C. § 1391(b),
 13 and is properly assigned to the San Francisco/Oakland intradistrict.

14 15 **PARTIES**

16 6. Plaintiffs Robert Cruz and Darwin Dias were and are, at all time
 17 relevant to this Complaint, each a physically disabled person, and a “person with
 18 disabilities,” as these terms are used under California law and under federal laws,
 19 including but not limited to §504 of the Rehabilitation Act of 1973 and Title II of
 20 the Americans with Disabilities Act of 1990. These terms, a “physically disabled
 21 person,” and a “person with disabilities,” will be used interchangeably
 22 throughout this Complaint. Plaintiffs each require the use of a wheelchair for
 23 mobility, due to their physical disabilities. Plaintiffs cannot walk and cannot
 24 climb stairs, and for many years each has required use of a motorized wheelchair
 25 for mobility.

26 7. Defendant City and County of San Francisco, and Does 1-5,
 27 Inclusive, are each a public entity subject to Title II of the Americans with
 28 Disabilities Act of 1990, to the requirements of the Rehabilitation Act of 1973, to

1 the requirements of California State law requiring full and equal access to public
 2 facilities pursuant to Government Code §§ 11135 and 4450ff, and to all other
 3 legal requirements referred to in this complaint.

4 8. Plaintiffs Robert Cruz and Darwin Dias each made a timely claim
 5 for damages to City and County of San Francisco, mailed to the San Francisco
 6 Controller's Office on or about October 10, 2007, copies of which are attached as
 7 **Exhibits A and B**, respectively. The City rejected plaintiff Robert Cruz claim by
 8 letter of November 2, 2007, and rejected plaintiff Darwin Dias' claim by letter of
 9 November 16, 2007.

10

11 **FACTUAL BASES FOR COMPLAINT**

12 9. On or about Saturday, May 26, 2007, at approximately 2:45
 13 p.m., Claimants Robert Cruz and Darwin Dias took the elevator down from
 14 Market Street to the Hallidie Plaza, one level down from the street level, in order
 15 to meet friends for coffee and snacks at the Cable Car Coffee restaurant located
 16 on the Hallidie Plaza. This elevator is owned and operated by defendants, and
 17 each of them. When plaintiffs arrived at the Hallidie Plaza, they met several non-
 18 disabled friends at the Cable Car Coffee restaurant, located on the Plaza, and sat
 19 in their wheelchairs at an outdoor table. Shortly before 4 p.m. they parted with
 20 their friends, who left by walking down several steps to BART. When Plaintiffs
 21 wheeled over to the elevator to leave, they discovered that the elevator had been
 22 shut off and an orange cone had been placed in front of the elevator door. They
 23 saw for the first time a sign above the elevator, posted by defendants, stating that
 24 the elevator was only kept open and operable from 9 a.m. to 5 p.m.,
 25 Monday-Friday, and 9 a.m. to 3 p.m. on Saturday and Sunday. On information
 26 and belief, such a policy specifically discriminates against physically disabled
 27 persons who use wheelchairs in that said policy effectively bars wheelchair users
 28 from using the facilities at Hallidie Plaza, including those of the Cable Car

1 Coffee restaurant, after 3 p.m. on weekends when such facilities are open to the
2 general public and are available to non-disabled persons without subjecting such
3 non-disabled persons to the danger of being trapped at Hallidie Plaza or being
4 excluded from Hallidie Plaza.

5 10. Plaintiffs then discovered that there was no other way to leave
6 Hallidie Plaza when the elevator was closed, except by going down
7 approximately six stairs to the BART station level or up approximately 20 stairs
8 to the street level. As a result, plaintiffs Robert Cruz and Darwin Dias were
9 trapped and stranded on the Hallidie Plaza level along with their heavy motorized
10 wheelchairs, and suffered a violation of their civil rights and were falsely
11 imprisoned. The Cable Car Coffee restaurant was still open. Plaintiffs inquired
12 of the Cable Car Coffee staff as to whether there were any restroom facilities on
13 the Hallidie Plaza level, and were told that there were none. The Cable Car
14 Coffee employees also advised that they did not know of any way to contact
15 someone to have the elevator turned back on. There were also no signs or
16 communication devices to notify the City of San Francisco or its employees that
17 disabled persons were trapped on the Hallidie Plaza level.

18 11. Claimant Robert Cruz was in pain from his need to urinate
19 and was concerned that he would suffer a bodily functions accident in his
20 clothing. He was able to signal two uniformed Muni Metro police officers who
21 came over and suggested that he go to the corner gutter and urinate there, despite
22 his humiliation in having to be required to urinate in a public place. Both
23 plaintiffs were also in pain and physical discomfort due to the weather turning
24 increasingly cold and windy.

25 12. Plaintiffs called the San Francisco Muni City Services line
26 and asked for assistance and, when the San Francisco Muni employee stated that
27 he could not provide assistance, plaintiffs asked to speak to a supervisor. The
28 supervisor claimed that the elevator did not belong to San Francisco Muni, but

1 told plaintiffs to call the San Francisco Department of Public Works; plaintiffs
2 tried to do this but were unable to obtain any assistance. Plaintiffs were told by
3 the City employee at the City Services direct line that she had contacted the
4 Department of Public Works and was told that their "engineer," who allegedly
5 had the only key for the Hallidie Plaza elevator, had left for the Memorial Day
6 weekend, and there was no way to contact him.

7 13. Meanwhile, after an extended wait, plaintiff Robert Cruz
8 again had a painful need to urinate and, with no restroom facilities available, was
9 again required to use a corner of the gutter, despite his embarrassment that he
10 might be in full view of members of the public passing by at the upper street
11 level. Finally, plaintiffs called the San Francisco Police Department, but were
12 then told to call the San Francisco Fire Department to request assistance.
13 Plaintiffs called the Fire Department and explained their situation and told where
14 the Hallidie Plaza was located. Finally, the San Francisco Fire Department
15 personnel arrived and assisted both plaintiffs down the stairs to the BART/Muni
16 Metro concourse level, and carried their heavy motorized wheelchairs down to
17 this level, so that plaintiff's could finally leave the premises.

18 14. Defendants' failure to provide access in the manner described
19 was in violation of multiple federal and state laws and regulations, including but
20 not limited to Title II of the Americans With Disabilities Act of 1990, § 504 of
21 the Rehabilitation Act of 1973, California Government Code §§ 4450ff,
22 California Civil Code §§ 54 and 54.1, and Title 24, the California Building Code.
23 As the result of the City's failure to carry out its legal obligations, plaintiffs were
24 discriminated against on the basis of their disability, and suffered violation of
25 their federal and state civil rights, and suffered physical, mental, and emotional
26 distress and injuries, all to their damages.

27 15. On a daily basis since May 26, 2007, and continuing up to the
28 time of the filing of this Complaint, plaintiffs have been deterred and discouraged

1 from returning to the Hallidie Plaza, and have been denied their rights to full and
 2 equal access to defendant's public accommodations and programs, services and
 3 activities, due to the lack of accessible facilities. Despite knowledge of damages
 4 suffered by plaintiffs on May 26, 2007 and their necessary rescue by the Fire
 5 Department, and despite plaintiffs' filing of their two government claims,
 6 defendants have consciously and intentionally continued their policy of
 7 discrimination against plaintiffs and other similarly situated disabled persons.

8 16. As a result of the actions and failure to act of defendant, and
 9 as a result of the inaccessibility of these public facilities, as above described,
 10 plaintiffs suffered denial of their civil rights and their rights to "full and equal
 11 access" to public facilities, and suffered mental and emotional distress, physical,
 12 pain and suffering, embarrassment and humiliation, and other injury, all to their
 13 damages, and to their detriment as alleged herein, on the basis that they were
 14 each a physically disabled person and unable to use defendants' public facilities
 15 on a full and equal basis with members of the general public.

16
 17 **FIRST CAUSE OF ACTION:**
 18 **DISCRIMINATION IN VIOLATION OF TITLE II OF THE AMERICANS**
 19 **WITH DISABILITIES ACT OF 1990**

20 17. Plaintiffs replead and incorporate by reference, as if fully set
 21 forth hereafter, the allegations contained in Paragraphs 1 through 16 of this
 22 Complaint and incorporate them herein as if separately replead.

23 18. Effective January 26, 1992, plaintiffs are entitled to the
 24 protections of the "Public Services" provision of Title II of the Americans with
 25 Disabilities Act of 1990. Title II, Subpart A prohibits discrimination by any
 26 "public entity", including any state or local government, as defined by 42 USC §
 12131, section 201 of the ADA.

27 19. Pursuant to 42 USC §12132, Section 202 of Title II, no
 28 qualified individual with a disability shall, by reason of such disability, be

1 excluded from participation in or be denied the benefits of the services, programs
2 or activities of a public entity, or be subjected to discrimination by any such
3 entity. Plaintiffs were each at all times relevant herein a qualified individual with
4 a disability as therein defined.

5 20. The defendant government entities have failed in their
6 responsibilities under Title II to provide their services, programs and activities in
7 a full and equal manner to disabled persons as described hereinabove, including
8 failing to ensure that the paths of travel, entrance, and related public facilities and
9 public accommodations, as described herein, are accessible to disabled persons,
10 and failing to remove known architectural barriers at the subject facilities so as to
11 be accessible to disabled persons, and/or modify their programs, services and
12 activities to make them accessible to disabled persons, including plaintiffs. As a
13 proximate result of defendants' actions and omissions, defendants have
14 knowingly and intentionally discriminated against plaintiffs, in violation of Title
15 II of the Americans With Disabilities Act of 1990, and of the regulations adopted
16 to implement the ADA.

17 21. As a result of such discrimination, in violation of §202 of the
18 ADA, plaintiffs are entitled to the remedies, procedures and rights set forth in
19 Section 505 of the Rehabilitation Act of 1973 (29 USC § 794a). Plaintiffs also
20 seek injunctive relief to require defendants to remove the barriers to access
21 complained of, and to provide all remedies, including damages, statutory attorney
22 fees, litigation expenses and costs, including those remedies specified by sections
23 203 and 505 of the Americans With Disabilities Act of 1990 and by California
24 Code of Civil Procedure § 1021.5, according to proof.

25 22. **INJUNCTIVE RELIEF:** Plaintiffs seek injunctive relief to
26 prohibit the acts and omissions of defendants as complained of herein which are
27 continuing on a day-to-day basis and which have the effect of wrongfully
28 excluding plaintiffs and other members of the public who are physically disabled,

1 including wheelchair users and other mobility disabled persons, from full and
 2 equal access to these public facilities. Such acts and omissions are the cause of
 3 humiliation and mental and emotional suffering of plaintiffs in that these actions
 4 continue to treat plaintiffs as an inferior and second class citizen and serve to
 5 discriminate against them on the sole basis that they are each a person with
 6 disabilities and requires the use of a wheelchair and/or other assistive mobility
 7 device for movement in public places. Plaintiffs are unable, so long as such acts
 8 and omissions of defendants continue, to achieve equal access to and use of these
 9 public buildings and facilities, and cannot return to properly use these facilities
 10 until they are made properly accessible to disabled persons. Plaintiffs allege that
 11 they intend to do so, once legally required access has been provided. The acts of
 12 defendants have proximately caused and will continue to cause irreparable injury
 13 to plaintiffs if not enjoined by this Court.

14 23. To the date of filing this Complaint, the specified public
 15 facilities continue to be inaccessible for safe and independent use by physically
 16 disabled persons such as plaintiffs. Plaintiffs request that an injunction be
 17 ordered requiring that defendant take prompt action to modify their policies and
 18 the aforementioned public facilities to render them accessible to and usable by
 19 plaintiffs and other similarly situated physically disabled persons, and thereby
 20 make its governmental services available to and usable by physically disabled
 21 persons.

22 Wherefore, plaintiffs pray the Court grant relief as requested herein below.

23
 24 **SECOND CAUSE OF ACTION:**
 25 **VIOLATION OF § 504 OF THE REHABILITATION ACT OF 1973**

26 24. Plaintiffs replead and incorporate by reference, as if fully set
 27 forth hereafter, the allegations contained in Paragraphs 1 through 23 of this
 28 complaint and incorporate them herein as if separately repled.

1 25. Public entity defendants City and County of San Francisco
2 and Does 1-5 are each a governmental entity existing under the laws of the State
3 of California with responsibility for, *inter alia*, the described public facilities,
4 including but not limited to walkways, paths of travel, and entrance, to the
5 subject public facility. Plaintiffs are informed and believe and therefore allege
6 that defendants are and have been at all relevant times the recipient of federal
7 financial assistance and that part of that financial assistance has been used to
8 fund the operations, construction and/or maintenance of the specific public
9 facilities described herein, and the activities which take place therein.

10 26. By their actions or inactions in denying disabled accessible
11 facilities at the public facilities specified herein, and in failing to provide access
12 due to the lack of an accessible path of travel from the public sidewalk to the
13 Hallidie Plaza, at times when Hallidie Plaza was open for use by the public and
14 available to non-disabled persons, defendants have violated plaintiffs' rights
15 under §504 of the Rehabilitation Act of 1973, 29 USC § 794, and the regulations
16 promulgated thereunder.

17 27. By their actions or inactions in denying to plaintiffs Robert
18 Cruz and Darwin Dias, each a disabled person, their rights to have "full and
19 equal" access to the same programs, activities, services, and environment as
20 non-disabled persons, and by otherwise discriminating against plaintiffs solely by
21 reason of their physical disability, defendants have violated plaintiffs' rights
22 under §504 of the Rehabilitation Act of 1973 and the regulations promulgated
23 thereunder. Plaintiffs seek damages for denial of their Civil Rights, for
24 interference with their right to access public accommodations, and for resulting
25 physical, mental and emotional injury, all to their damage according to proof.
26 Further, plaintiffs seek injunctive relief requesting that the Court order
27 defendants to correct the access deficiencies complained of herein so that
28 plaintiffs will not continue to be discriminated against and/or deterred from

entering and accessing the public accommodation in the subject public facility on the same basis as non-disabled persons, and seeks recovery of damages, statutory attorney fees, litigation expenses and costs.

28. Plaintiffs have no adequate remedy at law, and unless the relief requested herein is granted, plaintiffs will continue to suffer irreparable injury by the deprivation of meaningful access to the subject public facility operated by defendants.

Wherefore, plaintiffs pray the Court grant relief as requested, hereinbelow.

**THIRD CAUSE OF ACTION:
VIOLATION OF CALIFORNIA'S DISABLED ACCESS STANDARDS;
VIOLATION OF CALIFORNIA GOVERNMENT CODE §4450 et seq.,
RESULTING IN VIOLATION OF CIVIL CODE §§ 54ff**

29. Plaintiffs replead and incorporate by reference, as if fully set forth hereafter, the factual allegations contained in Paragraphs 1 through 28 of this complaint and incorporates them herein as if separately repled.

30. Plaintiffs are informed and believe and therefore allege that the specified public facilities owned and maintained by defendants are structures or related facilities within the meaning of California Government Code §§ 4450 and 4451. Plaintiffs are further informed and believe and therefore allege that the defendants have constructed, altered, or repaired parts of the subject public property, structure and facilities since 1968 within the meaning of California Government Code §§ 4450 *et seq.*, including §4456, thereby requiring provision of access to persons with disabilities, as required by law, and statutory attorney fees, litigation expenses and costs, including but not limited to public interest attorney fees pursuant to California Code of Civil Procedure §1021.5.

31. The actions and omissions of defendants as herein alleged constitute a denial of access to and use of the described public facilities by physically disabled persons within the meaning of California Government Code

1 §§4450, *et seq.* As a proximate result of defendants' action and omissions
2 defendants have discriminated against plaintiffs, in violation of California
3 Government Code §§ 4450, *et seq.*, and of Title 24-2 regulations adopted to
4 implement § 4450.

5 32. Plaintiffs have no adequate remedy at law, and unless the
6 relief requested herein is granted, plaintiffs will continue to suffer irreparable
7 harm as a result of defendants' failure to fulfill its obligations to provide
8 meaningful access to the subject public facilities.

9 33. Wherefore plaintiffs ask this Court to preliminarily and
10 permanently enjoin any continuing refusal by defendants to grant full and equal
11 access to plaintiffs in the respects complained of and to require defendants to
12 comply forthwith with the applicable statutory requirements relating to access for
13 disabled persons. Such injunctive relief is provided by California Government
14 Code §§4450ff, and California Civil Code §55, and other law. Plaintiffs further
15 request that the Court award damages pursuant to Civil Code §54.3 and attorney
16 fees, litigation expenses, and costs pursuant to Government Code §§ 4450ff,
17 Civil Code §§ 54.3 and 55, Code of Civil Procedure §1021.5 and other law, all as
18 hereinafter prayed for.

19 34. **DAMAGES:** As a result of the denial of equal access to
20 these facilities and due to the acts and omissions of defendants in owning,
21 operating, leasing, constructing, altering, and maintaining the subject facilities,
22 plaintiffs suffered multiple violations of their civil rights, including but not
23 limited to rights under Civil Code §§ 54 and 54.1, all to their damages per Civil
24 Code §54.3, as hereinafter stated. Defendants' actions and omissions to act
25 constitute discrimination against plaintiffs on the sole basis that each was and is
26 physically disabled and unable, because of the architectural barriers created
27 and/or maintained by defendants in violation of the subject laws, to use these
28 public facilities on a full and equal basis as other persons.

1 35. Treble Damages - Defendant City is also responsible for
 2 treble damages pursuant to Civil Code § 54.3 for violations of §§ 54, and 54.1,
 3 respectively, in that the violations of the rights of disabled persons were done
 4 knowingly and in conscious disregard for the rights of plaintiffs and other
 5 disabled persons in that the City has, on information and belief, known or should
 6 have known, that disabled persons used the Hallidie Plaza premises, including
 7 the Cable Car restaurant, at periods of time after 3 p.m., but chose to adopt and
 8 maintain a policy to cut-off elevator service to the Hallidie Plaza level at 3 p.m.
 9 despite this knowledge, and despite the knowledge that this elevator service was
 10 the only means by which disabled persons, and specifically wheelchair users such
 11 as plaintiffs, could enter or leave the Hallidie Plaza premises.

12 36. **FEES AND COSTS:** As a result of defendants' acts,
 13 omissions, and conduct, plaintiffs have been required to incur attorney fees,
 14 litigation expenses, and costs as provided by statute, in order to enforce
 15 plaintiffs' rights and to enforce provisions of the law protecting access for
 16 disabled persons and prohibiting discrimination against disabled persons.
 17 Plaintiffs therefore seek recovery of all reasonable attorney fees, litigation
 18 expenses, and costs, pursuant to the provisions of California Civil Code §§ 54.3
 19 and 55, and California Government Code §§4450ff. Additionally, plaintiffs'
 20 lawsuit is intended to require that defendants make their facilities accessible to
 21 all disabled members of the public, justifying "public interest" attorney fees,
 22 litigation expenses and costs pursuant to the provisions of California Code of
 23 Civil Procedure §1021.5 and other applicable law.

24 Wherefore, plaintiffs pray the Court grant relief as requested, hereinbelow.

25 //

26 //

27 //

28 //

**FOURTH CAUSE OF ACTION:
VIOLATION OF CALIFORNIA GOVERNMENT CODE § 11135
DISCRIMINATION UNDER PROGRAM RECEIVING
FINANCIAL ASSISTANCE FROM THE STATE**

37. Plaintiffs replead and incorporate by reference as if fully set forth herein the allegations contained in Paragraphs 1 through 36 of this Complaint.

38. On information and belief, the administration, supervision and maintenance by defendants of the property, structure, and facilities which are the subject of the action, are funded in part by the State of California.

39. Defendants have failed to make their programs, services, and activities readily accessible to and useable by disabled persons in violation of California Government Code § 11135 *et seq.* Government Code § 11135 states:

§ 11135. Programs or activities funded by state; discrimination on basis of ethnic group identification, religion, age, sex, color, or disability; federal act; definition

No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state. With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans With Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

40. Plaintiffs have no adequate remedy at law, and unless the requested relief is granted, plaintiffs and other disabled persons will suffer irreparable harm in that they will continue to be discriminated against and denied access to the subject facilities, and denied the benefits of the "programs, services and activities" offered to the general public. Further, plaintiffs suffered damages, as specified, as the result of denial of their civil rights when they tried to use these facilities and were thereafter deterred from using these facilities, according

1 to proof. Because plaintiffs seek improvement of access for physically disabled
2 persons, which will benefit a significant portion of the public, plaintiffs seek
3 attorney fees, litigation expenses and costs pursuant to California Code of Civil
4 Procedure §1021.5, as to this cause of action and as to all causes of action in this
5 complaint which seek injunctive relief.

6 Wherefore, plaintiffs pray the Court grant relief as requested, hereinbelow.
7
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, plaintiffs pray that this Court:

- 11 1. Issue a preliminary and permanent injunction directing
12 defendants to modify the subject public facilities and their policies and practices
13 relating to use and operation of the elevator to their public premises at Hallidie
14 Plaza, so that they provide full and equal access to physically disabled persons;
15 2. Retain jurisdiction over the defendants until such time as the
16 Court is satisfied that defendants' unlawful policies, practices, acts and omissions
17 complained of herein no longer exist, and will not recur;
18 3. Grant a jury trial and award to plaintiffs all appropriate
19 damages in an amount to be proved at trial, including treble damages;
20 4. Award to plaintiffs all costs of this proceeding and award all
21 statutory remedies including statutory attorney fees, litigation expenses and costs,
22 as provided by law;
23 5. Award prejudgment interest pursuant to Civil Code § 3291;
24 and
25 6. Grant such other and further relief as this Court may deem just
26 and proper.

27 //

28 //

1 Dated: January 14, 2008

PAUL L. REIN
JULIE A. OSTIL
ANNE WINTERMAN
LAW OFFICES OF PAUL L. REIN

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4 
5 Attorneys for Plaintiffs
6 ROBERT CRUZ and DARWIN DIAS

7 **DEMAND FOR JURY TRIAL**

8 Plaintiffs hereby demand a jury for all claims for which a jury is
9 permitted.

10
11 Dated: January 14, 2008

12 PAUL L. REIN
13 JULIE OSTIL
14 ANNE WINTERMAN
15 LAW OFFICES OF PAUL L. REIN

16 
17 Attorneys for Plaintiffs
18 ROBERT CRUZ and DARWIN DIAS
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EXHIBIT A

COPY

0800875

CLAIM AGAINST THE CITY AND COUNTY OF SAN FRANCISCO

Before completing this form, please read the instructions on the back. You have only 6 months from the date of incident to submit this form and supporting documentation to the Controller or the Clerk of the Board of Supervisors.

1. Claimant's Name and Home Address (Please Print Clearly) <u>Robert Cruz</u> <u>3954-18th St.</u> City <u>San Francisco</u> Zip <u>94114</u> Telephone Daytime _____ Evening _____	2. Send Official Notices and Correspondence to: <u>Paul Rein, Esq. / Law Office of Paul Rein</u> <u>200 Lakeside Dr., Suite A</u> City <u>Oakland, CA</u> Zip <u>94612-5031</u> Telephone Daytime <u>510/822-5001</u> Evening _____		
3. Date of Birth <u>8/7/48</u>	4. Social Security Number <u>Not required by law</u>	5. Date of Incident <u>5/26/07</u>	6. Time of Incident (AM or PM) <u>approx. 4 p.m.</u>
7. Location of Incident or Accident <u>Hallidie Plaza</u>		8. Claimant Vehicle License Plate #, Type and Year <u>N/A</u>	

9. Basis of Claim. State in detail all facts and circumstances of the incident. Identify all persons, entities, property and City departments involved. State why you believe the City is responsible for the alleged injury, property damage or loss.

See attached sheet

Name, I.D. Number and City Department of City Employee who allegedly caused injury or loss <u>Unknown</u>	Type of City Vehicle <u>N/A</u>	Vehicle License Number and Bus or Train Number <u>N/A</u>
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10. Description of Claimant's injury, property damage or loss

See attached sheet

11. Amount of Claimant's property damage or loss and method of computation. Attach supporting documentation. (See Instructions)

ITEMS

Damages in an amount within the jurisdiction of the California Superior Court, unlimited Civil

TOTAL AMOUNT

\$ _____

Court Jurisdiction: Limited Civil ☐

Unlimited Civil ☒

12. Witnesses (if any) Name

Address

Telephone

1. See attached sheet

2. _____

13.

Signature of Claimant or Representative

Date

10/11/07

Print Name

Paul L. Rein

Relationship to Claimant

attorney for claimant

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#1089

CITY & COUNTY OF
SAN FRANCISCO
CONTROLLER

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1 public facilities, and the "programs, services and activities" at the Hallidie Plaza, but not
 2 limited to: accessible and safe paths of travel to, through and within Respondent's facilities;
 3 and by failing to provide persons with mobility impairments with the accessibility features
 4 required under state law that mandate public accommodations be made "accessible to and
 5 useable by" persons with disabilities.

6 4. BASIS OF CLAIM; GENERAL DESCRIPTION OF INJURY OR LOSS - Claimant

7 ROBERT CRUZ is a physically disabled person who requires a wheelchair for mobility. On or
 8 about May 26, 2007, at approximately 2:45 p.m., Claimants Robert Cruz and Darwin Dias took
 9 the elevator down from Market Street to the Hallidie Plaza, one level down from the street
 10 level, in order to meet friends for coffee and snacks at the Cable Car Coffee restaurant located
 11 on the Hallidie Plaza. When they arrived at the Hallidie Plaza, they met their friends at the
 12 Cable Car Coffee restaurant, and sat in their wheelchairs at an outdoor table. Shortly before 4
 13 p.m. they parted with their friends, who left by walking down steps to BART. When Claimants
 14 wheeled over to the elevator to leave, they discovered that the elevator had been shut off and an
 15 orange cone had been placed in front of the elevator door. They saw for the first time a sign
 16 above the elevator stating that the elevator was only kept open and operable from 9 a.m. to 5
 17 p.m., Monday-Friday, and 9 a.m. to 3 p.m. on Saturday and Sunday. On information and
 18 belief, such a policy specifically discriminates against physically disabled persons who use
 19 wheelchairs in that said policy effectively bars wheelchair users from using the facilities at
 20 Hallidie Plaza, including those of the Cable Car Coffee restaurant, after 3 p.m. on weekends
 21 when such facilities are open to the general public and are available to non-disabled persons
 22 without subjecting them to the danger of being trapped at Hallidie Plaza or being excluded
 23 from Hallidie Plaza.

24 5. Claimants then discovered that there was no other way to leave Hallidie
 25 Plaza when the elevator was closed, except by going down stairs to the BART station level or
 26 up approximately 20 stairs to the street level. As a result, Claimants were trapped and stranded
 27 on the Hallidie Plaza level with their motorized wheelchairs and suffered a violation of their
 28 civil rights and were falsely imprisoned. Claimants inquired of the Cable Car Coffee staff as to

1 whether there were any restroom facilities on the Hallidie Plaza level, and learned that there
2 were none. The Cable Car Coffee employees also advised that they did not know of any way to
3 contact someone to have the elevator turned back on. There were also no signs or
4 communication devices to notify the City of San Francisco or its employees that disabled
5 persons were trapped on the Hallidie Plaza level.

6 6. Claimant Robert Cruz was in pain from his need to urinate and was
7 concerned that he would suffer a bodily functions accident in his clothing. He was able to
8 signal two uniformed Muni Metro police officers who suggested that he go to the corner gutter
9 and urinate there, despite his humiliation in having to be required to urinate in a public place.
10 Both Claimants were also in pain and physical discomfort due to it getting increasingly cold
11 and windy.

12 7. Claimants called the San Francisco Muni City Services line and asked
13 for assistance and, when the San Francisco Muni employee stated that he could not provide
14 assistance, Claimants asked to speak to a supervisor. The supervisor claimed that the elevator
15 did not belong to San Francisco Muni, but told claimants to call the San Francisco Department
16 of Public Works; Claimants tried to do this but were unable to obtain any assistance.
17 Claimants were told by the City employee at the City Services direct line that she had contacted
18 the Department of Public Works and was told that their "engineer," who allegedly had the *only*
19 key for the Hallidie Plaza elevator, had left for the Memorial Day weekend, and there was no
20 way to contact him.

21 8. Meanwhile, after an extended wait, Claimant Robert Cruz again had a
22 painful need to urinate and, with no restroom facilities available, was again required to use a
23 corner of the gutter in full view of persons passing by at the upper street level. Finally,
24 Claimants called the San Francisco Police Department, but were then told to call the San
25 Francisco Fire Department to request assistance. Claimants did so, and explained their
26 situation and where the Hallidie Plaza was located. Finally, the San Francisco Fire
27 Department personnel arrived and assisted both Claimants down the stairs to the BART/Muni
28 Metro concourse level, and carried both their heavy motorized wheelchairs down to this level.

9. **Witnesses:** Bill Dunlap and Barry Smith, addresses currently unknown, were the friends having coffee with claimants. The rescue of claimants by the San Francisco Fire Department was observed by witness Jonathan Runckle, address unknown. Other witnesses were two Muni Metro police officers, identities unknown; San Francisco Fire Department members, identities unknown; other San Francisco employees, identities unknown.

10. The names of the public employees responsible for damages are unknown at this time. On information and belief, all facilities complained of are owned and operated by the City and County of San Francisco.

11. Damages are for violation of civil rights, denial of full and equal access to public facilities, and personal injuries, including physical injuries, mental and emotional distress, and statutory damages and attorney fees, litigation expenses and costs, all in an amount within the unlimited jurisdiction of the California Superior Court.

Dated: October 11, 2007

PAUL L. REIN
JULIE A. OSTIL
ANN WINTERMAN
LAW OFFICES OF PAUL L. REIN

Paul L. Kerin
Attorneys for Claimant
ROBERT CRUZ

Certificate or Proof of Service by Mail, Fax or Personal Delivery

I, the undersigned, state: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Alameda, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is Law Office of Paul L. Rein, 200 Lakeside Drive, Suite A (Corner of Jackson & 19th Streets), Oakland, CA 94612; that on the below date, following normal business practice, I caused to be served the foregoing document described as:

CLAIM AGAINST PUBLIC ENTITYClaim Against Public Entity: Robert Cruz v. San Francisco

on the interested parties in this action, by taking a true copy thereof and conveying as follows:

- ☐ **Facsimile:** By facsimile transmission, from our regular facsimile machine at (510) 832-4787, at approximately _____, or soon thereafter, addressed to the following facsimile machine (☐ Without exhibits, which are to follow by mail; ☐ With exhibits; ☒ N/A):

Name of Person Served: See Above

Facsimile Telephone No: See Above

A facsimile machine report was printed immediately thereafter, which verified that the transmission was complete and without error.

- ☒ **U.S. Mail and/or Overnight:** By depositing true copies thereof, enclosed in a sealed envelope(s) with postage thereon fully prepaid, marked with the above address(es), and placed in:
- ☒ in First Class United States Mail
- ☐ in ☐ priority, or ☐ standard, overnight mail via Federal Express,
- I am readily familiar with our office's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence, including said envelope, will be deposited with the United States Postal Service at Oakland, and designated overnight packages will be timely scheduled for pickup or placed in Federal Express drop boxes or left at drop centers at Oakland.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made, and that the foregoing is true and correct under penalty of perjury pursuant to the laws of the United States and the state of California. Executed this October 12, 2007, in Oakland, California.

By: 

☒ Steven L. Rein ☐ Aaron Clefton ☐ Katherine Castro
☐ Patricia Barbosa ☐ Paul L. Rein ☐ Julie Ostil
 (Original signed)

EXHIBIT B

COPY

0800874

CLAIM AGAINST THE CITY AND COUNTY OF SAN FRANCISCO

Before completing this form, please read the instructions on the back. You have only 6 months from the date of incident to submit this form and supporting documentation to the Controller or the Clerk of the Board of Supervisors.

1. Claimant's Name and Home Address (Please Print Clearly) <u>Darwin Dias</u> <u>230 Eddy St. #1003</u> <u>City San Francisco CA Zip 94102-6523</u> Telephone <small>Daytime</small> _____ <small>Evening</small> _____		2. Send Official Notices and Correspondence to: <u>Paul Rein Esq./Law Office of Paul Rein</u> <u>200 Lakeside Dr. Suite A</u> <u>City Oakland, CA Zip 94612</u> Telephone <small>Daytime</small> <u>510/832-5001</u> <small>Evening</small> _____							
3. Date of Birth <u>2/11/34</u>	4. Social Security Number <u>Not required by law</u>	5. Date of Incident <u>5/26/07</u>	6. Time of Incident (AM or PM) <u>Approx 4 p.m.</u>						
7. Location of Incident or Accident <u>Hallidie Plaza</u>		8. Claimant Vehicle License Plate #, Type and Year <u>N/A</u>							
9. Basis of Claim. State in detail all facts and circumstances of the incident. Identify all persons, entities, property and City departments involved. State why you believe the City is responsible for the alleged injury, property damage or loss. <u>See attached sheet</u>									
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"><small>Name, I.D. Number and City Department of City Employee who allegedly caused injury or loss</small></td> <td style="width:33%;"><small>Type of City Vehicle</small></td> <td style="width:33%;"><small>Vehicle License Number and Bus or Train Number</small></td> </tr> <tr> <td><u>unknown</u></td> <td><u>N/A</u></td> <td><u>N/A</u></td> </tr> </table>		<small>Name, I.D. Number and City Department of City Employee who allegedly caused injury or loss</small>	<small>Type of City Vehicle</small>	<small>Vehicle License Number and Bus or Train Number</small>	<u>unknown</u>	<u>N/A</u>	<u>N/A</u>	10. Description of Claimant's injury, property damage or loss <u>See attached sheet</u>	
<small>Name, I.D. Number and City Department of City Employee who allegedly caused injury or loss</small>	<small>Type of City Vehicle</small>	<small>Vehicle License Number and Bus or Train Number</small>							
<u>unknown</u>	<u>N/A</u>	<u>N/A</u>							
11. Amount of Claimant's property damage or loss and method of computation. Attach supporting documentation. (See Instructions) <div style="text-align: center;">ITEMS</div> <u>Damages in an</u> \$ _____ <u>amount within jurisdiction</u> <u>of the California Superior</u> <u>Court, unlimited Civil</u> TOTAL AMOUNT \$ _____ Court Jurisdiction: Limited Civil <input type="checkbox"/> Unlimited Civil <input checked="" type="checkbox"/>		12. Witnesses (if any) Name Address Telephone 1. <u>See attached sheet</u> 2. _____							
13. <u>Paul H. Rein</u> <u>10/11/07</u> <small>Signature of Claimant or Representative Date</small> <u>Paul H. Rein</u> <u>attorney for</u> <small>Print Name Relationship to Claimant</small> <u>claimants</u>		<div style="border: 1px solid black; padding: 5px;"> Do Not Write In This Space <div style="text-align: right;">#1088</div> <div style="text-align: center;"> RECEIVED OCT 15 PM 12:36 CITY & COUNTY OF SAN FRANCISCO CONTROLLER </div> </div>							

1 PAUL L. REIN, Esq. (SBN 43053)
2 JULIE OSTIL, Esq. (SBN 215202)
3 ANN WINTERMAN, Esq. (SBN 222257)
4 LAW OFFICES OF PAUL L. REIN
200 Lakeside Drive, Suite A
Oakland, CA 94612
(510) 832-5001

5 Attorneys for Claimant
6 DARWIN DIAS

7 In the Matter of the Claim of
8 DARWIN DIAS,

9 Claimant,

10 v.

CLAIM AGAINST PUBLIC ENTITY

11 CITY AND COUNTY OF SAN FRANCISCO,

12 Respondent.

13 To CITY AND COUNTY OF SAN FRANCISCO (hereinafter also referred to as
14 "Respondent"), DARWIN DIAS hereby presents this claim pursuant to section 910 of the
15 California Government Code.

16 1. The name and address of claimant is DARWIN DIAS, 230 Eddy St., #1003, San
17 Francisco, CA 94102-6523.

18 2. The address for contact with Claimant DARWIN DIAS for any and all notices
19 regarding this claim is: c/o Paul L. Rein, Esq., 200 Lakeside Dr., Suite A, Oakland, CA 94612.

20 3. Claimant DARWIN DIAS is a physically disabled person, who is mobility
21 impaired from osteoarthritis and a number of respiratory illnesses including pneumonia,
22 tuberculosis, and chronic emphysema, as well as suffering from severe cervical-spinal
23 problems, and is a legally disabled person under California's disabled access statutes and
24 regulations and under the Americans with Disabilities Act of 1990. On May 26, 2007, and
25 continuing to the date of filing of this Claim, Claimant DARWIN DIAS has been denied full
26 and equal access to public facilities owned and operated, controlled and/or maintained by
27 Respondent, due to the circumstances more fully described below. Respondent has denied
28 Claimant his rights to full and equal access under state law, including California Government

Code §4450 *et seq.*, California Civil Code sections §§54 and 54.1 and California Code of Regulations, Title 24, by failing to provide disabled access to its public facilities, and the “programs, services and activities” at the Hallidie Plaza, but not limited to: accessible and safe paths of travel to, through and within Respondent’s facilities; and by failing to provide persons with mobility impairments with the accessibility features required under state law that mandate public accommodations be made “accessible to and useable by” persons with disabilities.

4. BASIS OF CLAIM; GENERAL DESCRIPTION OF INJURY OR LOSS - Claimant

DARWIN DIAS is a physically disabled person who requires a wheelchair for mobility. On or about May 26, 2007, at approximately 2:45 p.m., Claimants Robert Cruz and Darwin Dias took the elevator down from Market Street to the Hallidie Plaza, one level down from the street level, in order to meet friends for coffee and snacks at the Cable Car Coffee restaurant located on the Hallidie Plaza. When they arrived at the Hallidie Plaza, they met their friends at the Cable Car Coffee restaurant, and sat in their wheelchairs at an outdoor table. Shortly before 4 p.m. they parted with their friends, who left by walking down steps to BART. When Claimants wheeled over to the elevator to leave, they discovered that the elevator had been shut off and an orange cone had been placed in front of the elevator door. They saw for the first time a sign above the elevator stating that the elevator was only kept open and operable from 9 a.m. to 5 p.m., Monday-Friday, and 9 a.m. to 3 p.m. on Saturday and Sunday. On information and belief, such a policy specifically discriminates against physically disabled persons who use wheelchairs in that said policy effectively bars wheelchair users from using the facilities at Hallidie Plaza, including those of the Cable Car Coffee restaurant, after 3 p.m. on weekends when such facilities are open to the general public and are available to non-disabled persons without subjecting them to the danger of being trapped at Hallidie Plaza or being excluded from Hallidie Plaza.

5. Claimants then discovered that there was no other way to leave Hallidie Plaza when the elevator was closed, except by going down stairs to the BART station level or up approximately 20 stairs to the street level. As a result, Claimants were trapped and stranded on the Hallidie Plaza level with their motorized wheelchairs and suffered a violation of their

1 civil rights and were falsely imprisoned. Claimants inquired of the Cable Car Coffee staff as to
 2 whether there were any restroom facilities on the Hallidie Plaza level, and learned that there
 3 were none. The Cable Car Coffee employees also advised that they did not know of any way to
 4 contact someone to have the elevator turned back on. There were also no signs or
 5 communication devices to notify the City of San Francisco or its employees that disabled
 6 persons were trapped on the Hallidie Plaza level.

7 6. Claimant Robert Cruz was in pain from his need to urinate and was
 8 concerned that he would suffer a bodily functions accident in his clothing. He was able to
 9 signal two uniformed Muni Metro police officers who suggested that he go to the corner gutter
 10 and urinate there, despite his humiliation in having to be required to urinate in a public place.
 11 Both Claimants were also in pain and physical discomfort due to it getting increasingly cold
 12 and windy.

13 7. Claimants called the San Francisco Muni City Services line and asked
 14 for assistance and, when the San Francisco Muni employee stated that he could not provide
 15 assistance, Claimants asked to speak to a supervisor. The supervisor claimed that the elevator
 16 did not belong to San Francisco Muni, but told claimants to call the San Francisco Department
 17 of Public Works; Claimants tried to do this but were unable to obtain any assistance.
 18 Claimants were told by the City employee at the City Services direct line that she had contacted
 19 the Department of Public Works and was told that their "engineer," who allegedly had the *only*
 20 key for the Hallidie Plaza elevator, had left for the Memorial Day weekend, and there was no
 21 way to contact him.

22 8. Meanwhile, after an extended wait, Claimant Robert Cruz again had a
 23 painful need to urinate and, with no restroom facilities available, was again required to use a
 24 corner of the gutter in full view of persons passing by at the upper street level. Finally,
 25 Claimants called the San Francisco Police Department, but were then told to call the San
 26 Francisco Fire Department to request assistance. Claimants did so, and explained their
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 28 Department personnel arrived and assisted both Claimants down the stairs to the BART/Muni

1 Metro concourse level, and carried both their heavy motorized wheelchairs down to this level.

2 9. **Witnesses:** Bill Dunlap and Barry Smith, addresses currently unknown, were
3 the friends having coffee with claimants. The rescue of claimants by the San Francisco Fire
4 Department was observed by witness Jonathan Runckle, address unknown. Other witnesses
5 were two Muni Metro police officers, identities unknown; San Francisco Fire Department
6 members, identities unknown; other San Francisco employees, identities unknown.

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8 time. On information and belief, all facilities complained of are owned and operated by the
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11 public facilities, and personal injuries, including physical injuries, mental and emotional
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13 amount within the unlimited jurisdiction of the California Superior Court.

14
15 Dated: October 11, 2007

16 PAUL L. REIN
17 JULIE A. OSTIL
18 ANN WINTERMAN
19 LAW OFFICES OF PAUL L. REIN

20 
21 Attorneys for Claimant
22 DARWIN DIAS
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